



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha15010082

██████████
Complainant,

v.

AVI FOOD SYSTEMS,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission,”) pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On January 30, 2015, ██████████ (“Complainant”) filed a Complaint with the Commission against AVI Food Systems (“Respondent”) alleging discrimination on the basis of race, sex, and/or disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*). Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent terminated Complainant because of his race, sex, and/or a perceived disability. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent’s legitimate business expectations; and (4) similarly-situated female employees, employees of another race, or those without disabilities were treated more favorably under similar circumstances. There is sufficient evidence to believe that Complainant is a member of a protected class by virtue of his race (white) and sex (male). Assuming *arguendo* that he has a disability as defined under the law, evidence shows that he was subjected to an adverse employment action when Respondent terminated his employment on or about September 10, 2014. Moreover, there is sufficient evidence to show that Complainant was meeting Respondent’s legitimate business expectations and that similarly-situated employees of another race, female employees, or those without impairments were treated more favorably under similar circumstances.



By way of background, Respondent hired Complainant as a delivery driver on or about March 2012. At all times relevant to the Complaint, Complainant had a medical condition that prevented him from lifting more than 20 pounds. While Complainant asserts that he alerted Respondent of his restrictions and refused to perform such tasks because of his impairment, he asserts that he was terminated, without the benefit of the interactive dialogue process, because of his disability. Moreover, Complainant asserts that similarly-situated African-Americans and women were treated more favorably when they refused to perform various duties associated with their employment. Despite being given an opportunity to refute Complainant's assertions, Respondent failed to do so. Specifically, the Commission sent requests for information on or about February 27, 2015, April 10, 2015, and September 11, 2015, to no avail. Moreover, the Commission sent Respondent a subpoena requesting a response by October 7, 2015; however, Respondent failed to comply. As Complainant asserts sufficient facts to believe that a discriminatory practice occurred as alleged and Respondent failed to refute Complainant's assertions, probable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910-IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 14, 2015

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission